

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 19, 2012

v

KETYRAH LATOYA SAGE,

Defendant-Appellant.

No. 300967
Oakland Circuit Court
LC No. 2010-230731-FC

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

Following a jury trial, defendant appeals by right her jury trial conviction for armed robbery, MCL 750.529. We affirm.

At trial, defendant asserted the affirmative defense of duress. The trial court instructed the jury on the affirmative defense and on the prosecution's burden of rebuttal, and the jury found defendant guilty. On appeal, defendant argues that the prosecution presented insufficient evidence to rebut the defense. We review this issue de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

To prove armed robbery, the prosecution must show: "(1) an assault and (2) a felonious taking of property from the victim's presence or person (3) while the defendant is armed with a weapon." *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007). Every person who procures, counsels, aids, or abets in the commission of a crime may be prosecuted and convicted as if she had directly committed the offense. MCL 767.39; *People v Plunkett*, 485 Mich 50, 61; 780 NW2d 280 (2010). To convict a defendant on an aiding and abetting theory, a prosecutor must prove: (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement which assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that the defendant gave aid and encouragement. *Id.*

To present a prima facie case of duress, a defendant must present sufficient evidence from which a jury could find (1) threatening conduct sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm that is present, impending, or imminent, (2) the conduct in fact caused such fear of death or serious bodily harm in the mind of defendant, (3) the fear or duress was operating on the mind of defendant at the time of the alleged act, and (4) defendant committed the act to avoid the threatened harm. *People v*

McKinney, 258 Mich App 157, 164; 670 NW2d 254 (2003); *People v Ramsdell*, 230 Mich App 386, 401; 585 NW2d 1 (1998). The mere threat of future injury is insufficient to support a defense of duress. *Ramsdell*, 230 Mich App at 401.

In this case, defendant offered her own testimony that she aided the robbers out of fear for her own life and the lives of her family members. Defendant stated that a man named Kelsey called and demanded that she aid him in robbing the McDonald's restaurant where defendant worked, as payment for her grandmother's boyfriend's drug debt. Defendant acknowledged that she aided Kelsey and another man in robbing the McDonald's, but asserted that she did so out of fear. To support her assertion, she presented testimony that Kelsey had previously threatened her with a gun. Additionally, defendant's grandmother's boyfriend testified that he had a drug problem. This evidence was sufficient to present a prima facie case that defendant acted under duress.

The burden then shifted to the prosecution to show beyond a reasonable doubt that defendant did not act under duress. *People v Terry*, 224 Mich App 447, 453-454; 569 NW2d 641 (1997). The prosecution presented video evidence that defendant aided the robbers by unlocking the doors to the McDonald's, that she indicated to the robbers to be quiet, and that she moved something out of the way for them. The jury viewed defendant's demeanor on the McDonald's security video directly. Further, the prosecution cross-examined defendant and her witnesses, showing that the robbers' alleged threat to her occurred three and a half hours before the robbery. Additionally, the prosecution cross-examined defendant about her options in regard to getting assistance and escaping during those three and a half hours. The prosecution also challenged the credibility of her duress claim by pointing out her failure to warn her family members. Finally, the prosecution questioned her grandmother's boyfriend about the supposed threat; he responded that he did not know a man named Kelsey.

Taking into account the video, the cross-examination, and the other testimony concerning the night in question, the prosecution presented sufficient evidence to allow a jury to conclude beyond a reasonable doubt that defendant did not act under duress.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell